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MAR - 7 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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March 7, 1994

Mr. William Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

In re: Application of Aurio A. Matos  
BPH-911114MS in  
MM Docket 93-89  
Submission of Original Signatures

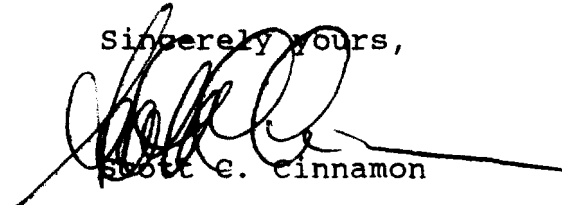
Dear Mr. Caton:

On February 7, 1994, applicant Aurio A. Matos filed a Petition for Leave to Amend ("Petition") and an Opposition to Motion to Reopen the Record and Enlarge Issues ("Opposition") with the Commission. The Petition contained, as Exhibit 3, an unsigned Declaration of Jose R. Perez-Villamil. Attached is a signed Declaration of Sr. Perez-Villamil. Please note that the text in his signed Declaration differs from the text contained in the draft Declaration that was attached as Exhibit 3 to the Petition. We ask that the signed Declaration of Sr. Perez-Villamil be associated with the Petition as Exhibit 3.

Exhibit 2 of the Petition and Exhibit A of the Opposition as filed was an unsigned Declaration of Aurio A. Matos. The two Exhibits were the same unsigned Matos Declaration and contained identical text. We are filing today a signed copy of that Declaration and ask that it be associated with the Petition as Exhibit 2 and the Opposition as Exhibit A.

If there is any question concerning this matter, please advise the undersigned.

Sincerely yours,

  
Scott E. Cinnamon

cc w/enc: Review Board Members  
Audrey L. Allison, Esq.  
Audrey P. Rasmussen, Esq.  
Gary P. Schonman, Esq.

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DECLARATION

I, José R. Pérez-Villamil, at the request of Mr. Aurio Matos, do hereby declare:

1. I am the owner of a parcel of land of approximately 60 acres , located at the Tamarindo Sector, Flamenco Ward of the municipality of Culebra, Puerto Rico.
2. I met Mr. Aurio Matos on approximately January 3, 1994 when he visited my property to examine the possibility of locating an antenna for an FM station on my property.
3. It is my intent to sign a lease of a parcel of land with Mr. Aurio Matos for the establishment of an FM antenna that would meet the following conditions:

That the lease would be signed within a year from today's date. That the antenna would be used to transmit only one FM frequency. That the lease would consist of an undeveloped parcel of land of seventy-five (75) feet by seventy-five (75) feet. That the leased lot would be located on the shoulder of the mountain that overlooks to the west, and not on the top of the mountain. That the leased parcel of land would be located not less than two hundred and fifty (250) horizontal feet from the top of the mountain. That the leased parcel of land would be used exclusively for the purpose of transmitting the FM signal, and not for any personal, residential, vacational or other commercial purpose. That on the leased parcel of land, lessee would erect an FM transmitting antenna and a one-story building not to exceed 30 by 30 feet to house the transmitter and other related equipment. That the emmissions from the transmitting tower would not interfere with the safety and health of any person passing by within a radius of 75 feet from the transmitting tower, or a person living in a household that is or were to be located within a distance of one-hundred (100) feet from the tower. That it has been represented by Mr. Matos that federal, Commonwealth or local regulations would not prevent lessor or future owners, as a consequence of the installation of said FM antenna, from erecting a building or structure at a distance beyond 100 feet from the transmitting tower. That all costs associated with the establishment of said antenna and transmitter, including road access, electric power lines would be at the expense of the petitioner Mr. Matos. That the rental payments for the entire first year would be paid at the moment of signing the lease. That beginning with the second year, the lease payments would be made in advance once every six months. That the lessee would have to maintain a liability policy of \$1,000,000 to cover any damages associated with the transmitting tower and include the lessor as additionally insured. That lessee would have to maintain at all times a \$20,000 payment and performance bond to the benefit of lessor as a partial guarantee to lessor for the costs of removal of the transmitter structure and antenna. That after lessee's default in rental payment, lessor would notify lessee of the default, which if not corrected within fifteen days would entitle lessor to disconnect electric power to the antenna and file eviction proceedings in the courts of the Commonwealth of Puerto Rico. That any violation of any terms of the lease contract which is not corrected by lessee after being notified in writing, within a reasonable period, which should not exceed ninety (90) days, would be sufficient ground for lessor, at his option, to file eviction proceedings and terminate the lease; and in such event lessee would agree to pay lessor \$25,000 as liquid damages. At the end of the lease, the antenna and the transmitter building shall accrue to the benefit of the lessor, or at the option of lessor, lessee shall remove the antenna and building, in which case the removal costs would be at the expense of lessee. That the term of the lease would be for ten years, with the renewal option for another ten years. That the rental would be one-thousand dollars (\$1,000) a month for the first five years, one thousand three hundred dollars (\$1,300) a month from the six through the ninth year, and from the eleventh to the nineteenth year, one thousand eight hundred dollars (\$1,800) a month.

Signed in Culebra, Puerto Rico, today February 24, 1994.

  
José R. Pérez-Villamil

### DECLARATION

I, Aurio Matos, under penalty of perjury and pursuant to Section 1.16 of the Commission's rules, do hereby declare:

1. I am an applicant for a new FM Station at Culebra, Puerto Rico, and was involved in a comparative hearing with a competing applicant, Lloyd Santiago-Santos and Lourdes Rodriques-Bonet. On November 4, 1993 the judge issued an Initial decision granting my application because I had proposed a site that served more people in large area and had more broadcast experience.

2. The site where I proposed to locate my tower is the same site currently used by WSAN-FM. Before I filed my application, I spoke with the owner of the tower, Sr. Juan Colón-Ventura, and he gave me permission to use his tower to place my antenna. I found out later, when Santiago and Rodriques filed a petition against me on June 22, 1993, that Colón Ventura's tower is located on the property of the U.S. Fish and Wildlife Service ("FWS"). I hired a lawyer in Puerto Rico to speak with the FWS at Culebra, and he was told that they would not make a decision on whether or not they wanted me to locate my antenna with Colón-Ventura's until after I was granted the construction permit from the FCC.

3. On December 9, 1993, after the Judge granted my application, I made a request to FWS for permission to put my antenna on Colón-Ventura's tower. I received on December 21, 1993, a letter from FWS dated December 13, 1993, saying that they did not want to grant me permission to place my antenna on Colón-Ventura's tower.

4. During the next week and half, I had many conversations with my attorney, Scott Cinnamon and my engineering consultants at Bromo Communications, they advised me, and eventually I agreed, that instead of appealing the FWS letter, I should find a new site.

5. By December 28, 1993. I had located a potential new site and contacted the site owner, Sr. José R. Pérez-Villamil by telephone. After I had his initial approval, I scheduled a meeting with him to further discuss the project. We met on January 3, 1994, and he agreed on that day to provide a letter to the FCC saying that he would allow me to locate a tower and transmitter for my FM station on his property. That same day I faxed the coordinates of Sr. Pérez-Villamil's property to my engineers so that they could prepare the necessary engineering amendment.

6. I realized that at the Pérez -Villamil site, instead of an existing tower, I would now have to construct my own tower. I have in my possession a self-supporting tower that can be used for the culebra station. During the next week, my engineers told me that it would add between \$5,000 and \$10,000 to the budget amount I had proposed to construct and put up the tower.

7. The engineers told me they had sent the engineering portion to my attorney to be filed on January 11, 1994. I called my attorney's office and they told me of the unfortunate personal circumstances that kept my attorney away from Washington for the week of January 10 to January 14, 1994.

8. While the engineers were working on the engineering amendment, I had many discussions with my attorney and he suggested some strategies at how I might be able to settle the case, and explained to me about a court decision that might delay any actions in comparative hearing cases like mine for several years. I decided to contact the other party to see if they were interested in settling, and they were. When my attorney returned, he and I worked on getting an agreement together where the case would be settled and the parties reached an agreement in principle on January 18, 1994.

9. On January 19, 1994, the lawyers for the two parties filed a letter with the Review Board at FCC telling them the parties had reached an agreement was prepared and filed. Since then I have been speaking with Santiago and Rodriques and the lawyers have been working on preparing settlement documents for us to sign. There was some discussion between the parties over whether my amendment should be filed before or after settlement and that has held up the process. I have been informed, and reviewed a copy of the petition filed by the Mass Media Bureau on January 28, 1994. It was never my intent to withhold any evidence from anybody. The Mass Media Bureau lawyer received the FWS letter at the same time I did. My attorney told me that we would have to turn that letter over to the parties and I told him if that's what we should do, then let's do it. I believe still that I could locate my antenna at the WSAW tower actually belongs to Colón-Ventura so FWS should not be able to stop us. This is based on discussions I had with my attorneys in Washington and Puerto Rico. To more quickly move the case along, and to avoid the FWS appeal process, I decided to find a new site instead.



Aurio Matos

Date: 6 February 1994